

Approved For Release 2003/03/06 : CIA-RDP86-00101R000100020007-5

SUBJECT: (Optional)

Recent Developments Concerning Intelligence Charter Legislation

FROM:

[REDACTED]
Deputy Chief, Information Services
Staff
5B2830 Headquarters

EXTENSION

NO

DATE

10 October 1979

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TO: (Officer designation, room number, and building)

DATE

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OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Director of Communications

2. Director of Data Processing

3. Director of Finance

4. Director of Logistics

5. Director of Medical Services

6. Director of Personnel

7. Director of Security

8. Director of Training

9.

10.

11.

12.

13. Atts: OGC 79-08737 dtd 9-25-79, Subj: Recent Developments Concerning Intelligence Charter Legislation w/atts Titles I, II, III

14.

15.

As promised, attached is a copy of the proposed revisions to the charter legislation. This material covers developments on charter legislation through mid-September 1979 and, combined with the revised drafts of Titles I, II, III, and IV previously sent you, represents a complete update on all the information received from OGC concerning charter legislation.

If you have any comments, please provide them directly to [REDACTED] in OGC and an info copy to C/ISS.

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Attachment:

As stated

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DC/ISS/ [REDACTED] :mes (10 Oct 1979)

Distribution:

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OGC 79-08737
25 September 1979

MEMORANDUM FOR: D/DCI/CT
D/DCI/RM
C/[]/DDO
AI/DDA
AD/NFAC
SA/DDS&T
Comptroller
Inspector General
A/DCI/PA
OLC

FROM: [] Special Assistant
to the General Counsel for Intelligence
Community Affairs

SUBJECT: Recent Developments Concerning Intelligence
Charter Legislation

1. This is to inform you of developments concerning intelligence charter legislation through mid-September 1979.

2. In early July the General Counsel, as Chairman of the Charter Legislation Working Group, provided the Senate Select Committee on Intelligence (SSCI) with Administration drafts of Titles I, II and III. Title I establishes the structure of the Intelligence Community and a Director of National Intelligence with broad powers, responsibilities, and coordination authorities. Title II (Limitations on Intelligence Activities) grants authority and establishes parameters for the collection of intelligence and other information concerning United States persons, including the use of electronic surveillance and physical search directed against such persons abroad. Title III (Physical Searches Within the United States) would amend the Foreign Intelligence Surveillance Act of 1978 by adding limited authority for physical searches within the United States in certain circumstances.

3. In mid-July the SSCI staff provided the Working Group, which is composed of representatives of the DCI, Attorney General, Secretaries of State and Defense, Director, FBI, other entities of the Intelligence Community, and the NSC staff, with counterdrafts of Titles I and II and comments on Title III.

After the Working Group had reviewed the counterdrafts, Dan Silver, as Chairman, met with Bill Miller, SSCI Staff Director, and other members of the staff in an attempt to resolve the differences between the SSCI and Administration drafts. The materials provided herewith will provide you with the details of this segment of the charter legislation process:

Tab A - SSCI Title I Draft

Tab B - Analysis of Title I

Tab C - SSCI Title II Draft

Tab D - Memorandum for the Record
dated 27 July 1979 concerning
Title I discussions with the
SSCI staff

Tab E - SSCI Comments on Title III

Tab F - Memorandum for the Record
dated 8 August 1979 concerning
Title I

Tab G - Memorandum for the Record
dated 6 September 1979 concerning
discussions with the SSCI staff
of Title I and Title II issues

Tab H - Memorandum for the Record
dated 7 September 1979 concerning
discussions of Title II issues
with the SSCI staff

A classified Memorandum for the Record dated 19 September 1979 concerning an SSCI staff-DoD-Working Group discussion of issues regarding DoD's conduct of special activities is being provided separately.

4. In the future I hope to keep you informed about charter developments on a more timely basis. We have already received new drafts of Titles I, II and III from the SSCI staff which incorporate many of the compromises that were discussed during the recent negotiations. These will be distributed shortly for your information. In addition, we and the SSCI staff are close to a final draft of Title IV, the CIA charter. I will distribute that draft when available.



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Attachments:

As stated

27 July 1979

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MEMORANDUM FOR THE RECORD

25X1 FROM :

SUBJECT: Major Topics of Recent Discussions Concerning
Title I Between Representatives of the Charter
Working Group and the SSCI

1. Attendees:

Working Group - Dan Silver



SSCI

- Bill Miller (not at first meeting)
John Elliff
Keith Raffel
Dave Shaw
Mike Epstein
Martha Talley

2. The SSCI representatives were advised by Dan Silver that the Administration is expecting counterproposals endorsed by the SSCI members themselves, rather than staff-level revisions, in response to the Presidentially-approved Administration positions. Bill Miller understood this but believed the staff needs to propose and discuss alternatives in order to develop issues and options, and to identify areas of impasse.

3. Dan Silver stated there was no point in discussing the SSCI provision (Section 141) imposing restrictions on use of various types of organizations for cover or of persons in particular categories for operational purposes since the SCC had clearly rejected such restrictions and the President had affirmed that decision. The SSCI staffers intimated that the inclusion of these restrictions was of particular interest and concern to one or more of the senators.

4. The staff members were particularly exercised over the Administration provision (Section 241(a)(2)) allowing Presidential waiver of all restrictions in a period covered

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by a report under the War Powers Resolution. It was pointed out that the scope of such a waiver would be limited to the 60 day period allowed under the War Powers Resolution, would apply only to the extent necessary in the specific circumstances, and would be reported to the SSCI and HPSCI. This was not seen as sufficiently safeguarding against abuse, however, and the spectre of waiving FISA (incorporated through Title III) and all limitations on the FBI's counter-intelligence activities was developed in the context of the Vietnam War and domestic dissent. The staffers envisioned a waiver authority limited to specific restrictions, such as that in their Section 141(e), or applying only outside the U.S. We agreed to study this point further.

5. The staffers asserted that it was important to the committee that a provision (their Section 114(h)) be included requiring the DNI to evaluate and report to the Congress as to the quality of national intelligence. Dan Silver described this as unnecessary, since such evaluation would be a necessary part of the DNI authorities already included in Title I, and as counterproductive, since it may be seen as an abdication of one of the committee's responsibilities. We agreed to review the provision, however, and suggested legislative history as a vehicle for making this point.

6. The staff version of Section 142 dealing with domestic publication was discussed, and Dan Silver explained the problems the Working Group had encountered in drafting satisfactory language regarding the "blowback" problem. All agreed, however, that the intelligence entities had no interest in clandestine funding of publications for purposes of distribution in the U.S. Accordingly, it was suggested that such a provision might be acceptable if vague phrases such as "likely redistribution" were avoided. The staff believed that such ambiguity could be clarified in legislative history.

7. John Elliff of the SSCI staff focused on the reinserted criminal penalty for unconsented human drug testing (Section 144) and stated that there seemed to be more congressional interest, at least at the staff level, in this provision than in any other. We pointed out that existing law created a national commission and a requirement for guidelines in this area, but the staffers believed this to be inadequate since it provided no criminal penalty. Dan Silver acknowledged that fact but noted that this provision would not be limited to intelligence employees and would introduce into the charter debate a complex mix of independent issues that would necessarily involve non-intelligence agencies and other committees of Congress. One staffer stated that if a criminal penalty is to be included to protect the identities of intelligence officials, this provision should be included to protect the public at large.

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8. The scope of the "intelligence exemption" under the Ethics In Government Act was described to the staffers in the context of their proposed conflict of interests provision (Section 146). When it was explained that the sole exception for intelligence employees under the current conflict of interests laws was protection of financial statements from public disclosure, their interest in this provision seemed to wane slightly.

9. It was acknowledged that the most significant stumbling blocks in the SSCI revision of Title I are the special activity provisions (Sections 131-135). Bill Miller was especially adamant that these activities, and other types of intelligence activities of particular sensitivity, should not be treated trivially and without careful review and consideration. Dan Silver retorted that a basic difficulty is the fact that the definition of "special activities" sweeps broadly across all non-collection activities and included many activities that are far from "essential" or conducted under "exceptional circumstances affecting the vital interests of the United States." Bill Miller's view was that broad programs rather than specific actions, should be examined in this light and that the nation had been damaged in the past by programs, such as the U-2 flights and the funding of student groups, that had been allowed to endure too long. Dan Silver acknowledged the need for careful consideration and review and noted that the Administration position created the structure required for that purpose. As for the standard to be applied, he noted that any statutory heightening of the current system under Hughes-Ryan would be presumptively unacceptable.

10. As to particular provisions, it was suggested that Section 131 might be acceptable if modified to constitute solely a statement of purpose rather than an implication of additional legal considerations. It was suggested this could be accomplished by an introductory clause to the effect that "It is the purpose of the procedures and standards established under this part that"

11. As to Section 132(a), there was some discussion of the deleted language authorizing DoD special activities concerning military matters. The staffers were concerned that this would impair central coordination by CIA of special activities abroad.

12. As to Section 133, it was recognized that if the standard for Presidential approval were to be changed from "essential" to "important" we would not be very far apart. Dan Silver described the practical need for approving "routine" activities at the SCC level, Bill Miller noted SCC approval would be possible with a Presidential finding as to particular categories under the SSCI proposal.

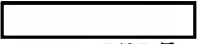
13. Concerning Section 134, Dan Silver stated his opinion that such a provision would be an insulting direction to the President, and that the basis for such a provision had disappeared since E.O.s 11905 and 12036 had created a structure and procedures for review of intelligence activities. Any decision by a future President to scrap this apparatus would surely come only after careful consideration. Bill Miller expressed the thought that this provision is intended to tell a President to be concerned about activities other than covert action. The staffers suggested substituting language providing only that the President may promulgate guidelines regarding review and approval of activities that are "exceptionally risky" or involve "great risks." Dan Silver acknowledged that such a provision would merely state an expectation and would be meaningless to the point of probable acceptability.



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